REMARKS

This communication is submitted to place the subject continuation application in condition for examination on the merits.

Claims 1, 7 and 9-11 are pending in the subject application with claims 1 and 9 having been amended and claims 2-6, 8 and 12-21 having been canceled.

Fig. 2 has been amended to add reference numeral "26" referred to in the specification.

Claims 1, 7 and 9-11 are submitted to be patentable over Seder et al (5,116,327) cited and applied by the Examiner in parent application Serial No. 10/028,776 filed December 28, 2001. Independent claim 1 requires the hollow tubular shaft to be made of a "first material having a rigidity to resist bending and maintain said passage in an open condition" and requires the flange to be made of "a second material having a rigidity sufficiently less than that of said first material to permit said flange to deform in response to contact with the anatomical structure." The drain tube 20 of Seder et al is explicitly required to be "flexible" (Col. 3, line 13) and is inconsistent with the recited tubular shaft being made of a first material having a rigidity to resist bending, particularly since Seder et al clearly illustrates the drain tube 20 as being highly flexible (Figs. 1 and 7). Notably, Seder et al discloses the drain tube 20 as being highly bendable regardless of whether or not it maintains an open passage. The tubular shaft recited in claim 1 is required to be made of a first material having a rigidity to both resist bending and maintain the passage in an open condition whereas the drain tube 20 of Seder et al does not resist bending.

In addition to the drain tube 20 of Seder et al not meeting the limitations of the tubular shaft recited in claim 1, the T-shaped body 12 of Seder et al does not meet the limitations of the flange as recited in claim 1. Seder et al explicitly discloses the T-shaped body 12 as being rigid or soft and resilient, and sufficiently stiff to prevent collapse and to retain the T-shape configuration (Col. 3, line 67-Col. 4, line 3). If the T-shaped body 12 is rigid it cannot be made of a second material having a rigidity less than that of the first material from which the drain tube 20 is made since, as explained above, the drain tube 20 is required to be flexible. If the T-shaped body 12 is soft and resilient and sufficiently stiff to prevent collapse and retain the T-shape configuration, it does not inherently or necessarily follow that the T-shaped body 12 be made of a second material less rigid than the first material from which the flexible drain tube 20 is made. Regardless of whether or not the drain tube 20 and the T-shaped body 12 are made of different materials, there are no teachings or suggestions whatsoever by Seder et al of the T-shaped body 12 being made of a second material having a rigidity less than that of the material from which the drain tube 20 is made. As noted above, where the T-shaped body 12 is "rigid" as disclosed by Seder et al, it cannot be made of a material less rigid than the "flexible" drain tube 20. Where the T-shaped body 12 is "soft and resilient, and sufficiently stiff to prevent collapse and to retain the T-shaped configuration" as alternatively disclosed by Seder et al, there are still no teachings or suggestions whatsoever in Seder et al of the T-shaped body 12 being made of a material more or less rigid than the "flexible" drain tube 20. Indeed, Seder et al discloses the T-shaped body 12 as having indentations 24a which permit the arms 16 and 18 to collapse as shown in Fig. 5, thereby obviating the need to make the T-shaped body 12 of less rigid material than the drain tube 20.

In light of the foregoing, independent claim 1 and claims 7 and 9-11 depending from claim 1 are submitted to be clearly patentable over Seder et al

Early, favorable action on the merits of the subject application is courteously solicited.

In view of the above, the present application should now be in condition for early action on the merits.

Should any issues in the subject application remain unresolved, the Examiner is encouraged to contact the undersigned attorney

Respectfully submitted,

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